

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:MAN:1:TL-N-3465-01
VJKanrek

date:

to: Pamela Christensen, Field Specialist Employment Tax Manager, LM:FS
Attention: Chris Longo, Employment Tax Specialist, Group 1162/1352

from: Area Counsel (LM:FS:Manhattan)

subject:

Execution of Form SS-10 to Extend the Time to Assess Employment
Taxes for the Taxable Years Ending December 31, [REDACTED] and
December 31, [REDACTED]

Statute of Limitations Expires: December 31, [REDACTED]

U.I.L. Nos. 6501.04-02, 6501.07-15, 6501.08-09, 6501.08-17

This memorandum is in response to your request for assistance on May 10, 2001, in the above-captioned matter concerning a Form SS-10, Consent to Extend the Time to Assess Employment Taxes for the tax years ending December 31, [REDACTED] and December 31, [REDACTED] of [REDACTED] (hereinafter "[REDACTED]"), now known as [REDACTED] (hereinafter "[REDACTED]"). This memorandum should not be cited as precedent.

ISSUES

1. Who is authorized to execute a Form SS-10, Consent to Extend the Time to Assess Employment Taxes for the tax years ending December 31, [REDACTED] and December 31, [REDACTED]?
2. What language should be used in the caption of the Form SS-10?

CONCLUSIONS

1. An authorized officer of [REDACTED] (formerly known as [REDACTED]) is authorized to execute a Form SS-10, Consent to Extend the Time to Assess Employment Taxes for [REDACTED] for its tax years ending December 31, [REDACTED] and December 31, [REDACTED].
2. Set forth below is suggested language to appear in the caption of the Form SS-10.

FACTS

This opinion is based on the facts set forth herein. It may change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the National Office of the Office of Chief Counsel for review. That review might result in modification to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately ten days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

For the taxable years ended December 31, [REDACTED] and December 31, [REDACTED], [REDACTED] (E.I.N. [REDACTED]) filed corporate employment tax returns on behalf of itself (Forms 940 and 941). These returns were not included within consolidated returns filed by any entity. No Forms SS-10 extending the time to assess employment taxes for the taxable years ending December 31, [REDACTED] and December 31, [REDACTED] of [REDACTED] have been necessary until now.

On [REDACTED], [REDACTED] became an indirect wholly owned subsidiary of [REDACTED], a corporation organized under the laws of Switzerland ("[REDACTED]"). Pursuant to a merger agreement (hereinafter the "[REDACTED] Merger Agreement"), the following transaction occurred: [REDACTED] ("[REDACTED]"), the purchaser, a Delaware corporation and an indirect wholly owned subsidiary of [REDACTED], acquired shares of [REDACTED] pursuant to a Tender Offer to [REDACTED] shareholders and a Stock Purchase from [REDACTED], formerly the ultimate parent of [REDACTED]. All such shares were transferred to [REDACTED] ("[REDACTED]"), formerly a wholly owned subsidiary of [REDACTED]. [REDACTED] was merged into [REDACTED], and [REDACTED], now holding the shares of [REDACTED], was merged into [REDACTED] ("[REDACTED]"), a Delaware corporation and indirect wholly owned subsidiary of [REDACTED]. As a result of these mergers, [REDACTED] became a direct wholly owned subsidiary of [REDACTED] and an indirect wholly owned subsidiary of [REDACTED].

According to Article [REDACTED] Section [REDACTED] of the Merger Agreement, the separate corporate existence of [REDACTED] ceased and [REDACTED] continued as the surviving corporation; however its name was changed to [REDACTED]. The Merger Agreement further provides that the effect of the merger shall be as provided in the applicable provisions of Delaware law, and that all the property, rights, privileges, powers and franchises of [REDACTED] and [REDACTED] shall vest in [REDACTED], and all debts, liabilities, obligations, restrictions, disabilities and duties of [REDACTED] and [REDACTED] shall become the debts,

liabilities, obligations, restrictions, disabilities and duties of [REDACTED], as the surviving corporation.

[REDACTED], Chief Financial Administrative Officer and Director of [REDACTED], on letterhead of [REDACTED], provided a letter to the Service dated [REDACTED], in which he designated [REDACTED], Managing Director and Director of Taxes, and [REDACTED], Senior Vice President and Tax Manager, to execute Consents to Extend the Time to Assess Employment Taxes (IRS Forms 872 and SS-10) and to execute IRS Forms 5701, "Notice of Proposed Adjustments" and as authorized to receive from or inspect confidential tax information and discuss tax issues and adjustments with the Service with regard to corporate income tax returns filed by [REDACTED] and its subsidiaries, for the tax years ended December 31, [REDACTED] through [REDACTED].

DISCUSSION

1. Who is authorized to execute a Form SS-10, Consent to Extend the Time to Assess Employment Taxes, for the tax years ending December 31, [REDACTED] and December 31, [REDACTED]?

I.R.C. § 6501(a) provides generally that the amount of any tax shall be assessed within three years after the relevant tax return was filed. Under I.R.C. § 6501(c)(4), the Service and a taxpayer may consent in writing to an extension of the time for making an assessment if the consent is executed before the expiration of the previously existing period, i.e., either the original statutory period set forth in I.R.C. § 6501(a) or an extended period established in a prior written extension agreement between the parties. A Form SS-10, Consent to Extend the Time to Assess Employment Tax, is used to so extend the limitations period.

Since the employment tax liabilities were not part of a consolidated return for the taxable years in issue, [REDACTED] would generally be the proper party to sign the consents. Based on the facts as we understand them, [REDACTED] was acquired by [REDACTED] on [REDACTED], and continues its corporate existence, however, it now operates as [REDACTED]. Accordingly, the Form SS-10 should bear the following caption: "[REDACTED], (EIN: [REDACTED]) formerly known as [REDACTED], (EIN: [REDACTED])."

Under § 6061, any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. In the case of corporate returns, § 6062 provides that a corporation's income tax return

shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The regulations under § 6501(c)(4) do not specify who may sign consents executed under this section. Accordingly, the Service will apply the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. Under Treas. Reg. § 1.6062-1, returns that are required to be made by corporations under the provisions of subtitle A or subtitle F of the Internal Revenue Code with respect to any tax imposed by subtitle A shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to sign such returns. Accordingly, any such officer of [REDACTED] is authorized to sign the consents. Therefore, you may rely on the [REDACTED] letter from [REDACTED], Chief Administrative Officer and Member of the Executive Board of [REDACTED], in which he expressly authorizes [REDACTED], Managing Director and Director of Taxes, and [REDACTED], Senior Vice President and Tax Manager, to execute Forms SS-10.

2. What language should be used in the caption of the Form SS-10?

As previously stated, the Form SS-10 should bear the following caption:

[REDACTED], (EIN: [REDACTED]), formerly known as [REDACTED], (EIN: [REDACTED]).

As discussed, the employment taxes with respect to which you wish to extend the time to assess are Federal Unemployment Tax (FUTA) under I.R.C. § 3306, Federal Insurance Contributions (FICA) under I.R.C. § 3121, and income tax withholding under I.R.C. § 3402. Accordingly, you should insert "December 31, [REDACTED] and December 31, [REDACTED]" in sections 1(a), (b) and (c) of the Form SS-10.

PROCEDURAL CONSIDERATIONS

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, IRM 121.2.22.3 requires the use of Letter 907(DO) to solicit the Form SS-10, and IRM 121.2.22.4.2 requires use of Letter 929(DO) to return the signed Form SS-10 to the taxpayer. Dated copies of both letters should be retained in the

case file as directed. When the signed Form SS-10 is received from the taxpayer, the responsible manager - that is, one who reports to the Director of an LMSB Industry Group - should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 121.2.22.5.10. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 121.2.22.5.11(1)(4). In the event a Form SS-10 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative, to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you must give Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the statute extension.

This advice relates solely to the facts of this case and should not be used or applied to the facts of any other case. If you have any questions concerning this memorandum, please contact Victoria J. Kanrek at (212) 264-1595, ext. 238.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL
Area Counsel - LMSB Area 1

By: _____
VICTORIA J. KANREK
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